

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Kenneth Nickolai
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Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of WWC HOLDING CO., INC. d/b/a)
CELLULARONE® Petition for Designation as an)
Eligible Telecommunications Carrier and) Docket No. _____
Redefinition of Rural Telephone Company Service)
Area Requirement)

VERIFIED PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER AND
REDEFINITION OF RURAL TELEPHONE COMPANY SERVICE AREA
REQUIREMENT FOR CERTAIN SERVICE AREAS

1. WWC Holding Co., Inc. d/b/a CellularOne® ("Western Wireless" or the "Company") pursuant to 47 U.S.C. § 214(e)(2) of the Communications Act of 1934, as amended (the "Act"), and Minn. Rule 7811.1400, hereby submits this Petition for Designation ("Petition") as an eligible telecommunications carrier ("ETC") in the State of Minnesota for purposes of obtaining universal service support from federal universal service funds. Western Wireless is licensed and provides wireless telecommunications services throughout certain rural telephone areas in Minnesota, including the requested designated areas (the "Designated Areas") described herein.¹ Each of these Designated Areas is either a rural telephone company study area that Western Wireless serves in its entirety, or a rural telephone company wire center.

¹ A "rural telephone company" is defined in Section 153(37) of the Act. The Designated Areas are identified on Attachment 1 and Attachment 2. Western Wireless seeks ETC designation in the rural telephone company study areas that it wholly serves, as identified on Attachment 1. For the rural telephone company study areas that Western Wireless cannot serve in its entirety, as identified on Attachment 2, the Company seeks conditional ETC designation on a wire center basis consistent with prior Commissions orders. See, e.g., *In the Matter of the Petition of RCC Minnesota, Inc. and Wireless Alliance, LLC for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, Docket No. PT-6182,6181/M-02/1503 (Jul. 31,

2. The Minnesota Public Utilities Commission ("Commission") has previously designated Western Wireless as an ETC in certain areas served by Qwest and Frontier, and in the study areas of other rural telephone companies. *In the Matter of Minnesota Cellular Corporation's Petition for Designation as an Eligible Telecommunications Carrier*, Docket No. P-5695/M-98-1285 (Oct. 27, 1999) ("*Western Wireless ETC Order*"). In this Petition, Western Wireless seeks ETC status subject to the same conditions already in effect for its ETC designation in other areas of the State. Upon designation in this docket, Western Wireless will amend its current tariff to list the service areas in which its basic universal service offering ("BUS Offering") will be made available. Western Wireless will otherwise adhere to the same compliance filing matters previously submitted and approved under the *Western Wireless ETC Order*, including the advertising plan and customer service agreement, in the Designated Areas to be approved in this docket. As demonstrated herein, and certified in Attachment 3 to this Petition, Western Wireless meets all of the requirements for designation as an ETC in each of these Designated Areas and respectfully requests that the Commission promptly grant this Petition.

I. Identification of Western Wireless

3. Pursuant to Minn. Rule 7811.1400, subp. 4(A), Western Wireless states its name, address, telephone number, and designated contact person as follows:

WWC Holding Co., Inc. d/b/a CellularOne®
Attention: James H. Blundell
3650 – 131st Avenue S.E., Suite 400
Bellevue, WA 98006
Telephone: (425) 586-8736
Facsimile: (425) 586-8118

2003) ("*RCC Order*"); *In the Matter of the Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, Docket No. PT-6153/AM-02-686 (Mar. 19, 2003) ("*Midwest Wireless Order*").

4. Western Wireless is a provider of commercial mobile radio services ("CMRS") licensed by the Federal Communications Commission ("FCC") under federal law.² Since 1992 Western Wireless, through its subsidiaries (including WWC Holding Co., Inc.), has provided telecommunications services to rural communities in the western United States. Western Wireless currently provides CMRS under the CellularOne® national brand name in 19 states west of the Mississippi River, including Minnesota. The Company owns cellular licenses covering approximately twenty-five percent (25%) of the land and two percent (2%) of the population of the continental United States.

5. The FCC has regulatory jurisdiction over Western Wireless' provision of CMRS in all states in which it provides services. The services provided by Western Wireless in Minnesota include mobile telephony, data/facsimile, 911, voice mail, and other features and services. WWC Holding Co., Inc. is the non-wireline FCC licensee in all of the cellular license areas in Minnesota.

II. Western Wireless Meets All the Requirements for Designation as an Eligible Telecommunications Carrier

6. Under 47 U.S.C. § 214(e)(2) and Minn. Rule 7811.1400, subp. 2, the Commission has the jurisdiction and authority to designate Western Wireless as an ETC in its Designated Areas. The requirements for ETC designation are set forth in 47 U.S.C. § 214(e)(1)-(2), 47 C.F.R. § 54.101, and incorporated by reference in Minn. Rule 7811.0100, subp. 15. As the Commission found in the *Western Wireless ETC Order*, and as set forth below, Western Wireless

² As a CMRS provider, Western Wireless is not regulated by the Commission. Although the Commission's rules refer only to designation of CLECs, *i.e.*, regulated carriers, the Commission has designated CMRS providers as ETCs. *See, e.g., RCC Order; Midwest Wireless Order; Western Wireless ETC Order.* Accordingly, Western Wireless requests a permanent variance of a portion of Minn. Rule 7811.1400, subp. 2 restricting an ETC designation to a "competitive local exchange carrier."

(1) is a common carrier; (2) provides the supported services; and (3) will meet all service and advertising obligations of an ETC. In addition, in areas served by rural telephone companies, Western Wireless' ETC designation serves the public interest.

A. Western Wireless is a Common Carrier Providing Service Over its Own Facilities

7. As a CMRS provider, Western Wireless is a "common carrier" under federal law, as required by 47 U.S.C. § 214(e)(1). *See* 47 C.F.R. § 20.9(a)(7). Western Wireless is a facilities-based provider, and will provide supported services using its own facilities, or a combination of its own facilities and leased facilities.

B. Western Wireless Offers All Required Services and Functionalities

8. Western Wireless provides each of the supported services identified by the FCC in 47 C.F.R. § 54.101(a)(1)-(9). *See Western Wireless Order*, ¶ VI.B.1. The required services are as follows:

<u>Supported Service</u>	<u>Does Western Wireless Currently Provide the Service or Function</u>
1. Voice-grade access to the public switched network.	Y
2. Local usage	Y
3. Dual tone multi-frequency (DTMF) signaling or its functional equivalent	Y
4. Single-party service or its functional equivalent	Y
5. Access to emergency services	Y
6. Access to operator services	Y
7. Access to interexchange service	Y
8. Access to directory assistance	Y
9. Toll limitation for qualifying Lifeline customers	Y

9. Western Wireless currently provides the nine supported services set forth in 47 C.F.R. § 54.101(a)(1)-(9) throughout the requested Designated Areas over its existing network infrastructure in Minnesota as follows:

(a) Voice-grade access to the public switched telephone network. "Voice-grade access" means the ability to make and receive phone calls, within the 300 to 3000 Hertz frequency range. 47 C.F.R. § 54.101(a)(1). Through its interconnection arrangements with local telephone companies, including Qwest, all Minnesota customers of Western Wireless are able to make and receive calls on the public switched network within the FCC's specified bandwidth.

(b) Local usage. An ETC must include an amount of free local usage as part of a universal service offering. 41 C.F.R. § 54.101(a)(2). Unlimited local usage is not required of any ETC. *In the Matter of Federal-State Joint Board of Universal Service*, CC Docket No. 96-45, Order and Order on Reconsideration, FCC 03-170, ¶ 14 (rel. July 14, 2003) ("*July 2003 Order*"). Western Wireless will include varying amounts of local usage in all of its service offerings, and will offer unlimited local usage within its BUS Offering. In addition, Western Wireless will comply with any and all minimum local usage requirements ultimately adopted by the FCC.

(c) Dual-tone, multi-frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. 47 C.F.R. § 54.101(a)(3). Western Wireless currently uses out-of-band digital signaling and in-band multi-frequency ("MF") signaling that is functionally equivalent to DTMF signaling. *In the Matter of Federal-State Joint Board of Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 71 (rel. May 8, 1997) ("*Universal Service Order*").

(d) Single-party service or its functional equivalent. "Single-party service" means that only one party will be served by a subscriber loop or access line, in contrast to a multi-party line. 47 C.F.R. § 54.101(a)(4). The FCC's regulation further states that a CMRS provider meets the requirement of offering single party service when it offers a dedicated message path for the length of a user's particular transmission. *Id.*; *Universal Service Order*, ¶ 162. Western Wireless meets this requirement by providing a dedicated message path for the length of all customer calls.

(e) Access to emergency services. The ability to reach a public service answering point ("PSAP") by dialing 911 is a required service in any universal service offering. Enhanced 911, or "E911," which includes the capability of providing both automatic numbering information ("ANI") and automatic location information ("ALI"), is only required if a public emergency service provider makes arrangements with the local provider for the delivery of such information. 47 C.F.R. § 54.101(a)(5); *Universal Service Order*, ¶ 72. Western Wireless provides universal access to the 911 system for its customers, and has implemented and will continue to implement E911 services consistent with the FCC's Rules and Orders and local PSAP requests. *See Corr Wireless Communications, LLC*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-2855, ¶ 9 n.28 (rel. Oct. 31, 2002) (noting provision of 911, implementation of Phase I E911 where requested, and waiver of Phase II E911). As of February 1, 2004, Western Wireless has launched Phase I E911 service in all of the Minnesota counties that the Company serves, except Rock and Watonwan. The Company is in the process of deploying Phase I E911 service in the remaining two counties with testing scheduled before the end of March 2004. Pursuant to the Manager of the Minnesota Statewide 911 Program,

Phase II E911 deployment will not take place until after Phase I E911 has been completely implemented.

(f) Access to operator services. "Access to operator services" is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Western Wireless meets this requirement by providing all of its customers with access to operator services provided by either itself or other entities (e.g. LECs, IXC's, etc.).

(g) Access to interexchange service. A universal service provider must offer consumers access to interexchange service to make and receive interexchange calls. 47 C.F.R. § 54.101(a)(7). Equal access to interexchange services, *i.e.*, the ability of a customer to access a presubscribed long distance carrier by dialing "1+," is not required. *July 2003 Order*, ¶¶ 14-15; *Universal Service Order*, ¶ 78. Western Wireless presently meets this requirement by providing all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements it has with several interexchange carriers (IXCs). Additionally, customers are able to reach their IXC of choice by dialing the appropriate access code.

(h) Access to directory assistance. "Access to directory assistance" means the ability to place a call directly to directory assistance. 47 C.F.R. § 54.101(a)(8). Western Wireless meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212."

(i) Toll limitation for qualifying low-income consumers. An ETC must offer "toll limitation" services to qualifying Lifeline customers at no charge. FCC Rule 54.400(d) defines "toll limitation" as either "toll blocking" or "toll control" if a carrier is incapable of providing both, but as both "toll blocking" and "toll control" if a carrier can provide both. Toll

blocking allows consumers to elect not to allow the completion of outgoing toll calls. Toll control allows consumers to specify a certain amount of toll usage that may be incurred per month or per billing cycle. 47 C.F.R. § 54.500(b)-(c). Western Wireless is currently not capable of providing toll control. Today, the Company offers toll-blocking services for Lifeline customers in States in which it has been designated as an ETC, including Minnesota. Western Wireless will offer toll blocking to Lifeline customers, at no charge, in the Designated Areas in satisfaction of federal requirements.

C. **Western Wireless Will Offer and Advertise the Availability of Supported Services**

10. Western Wireless provides services today within the Designated Areas using its existing network facilities. Upon designation, Western Wireless will provide the supported services within those Designated Areas consistent with the obligations of an ETC.

11. Western Wireless will also advertise the availability of the supported services and charges therefor using media of general distribution, in accordance with the requirements of 47 C.F.R. § 54.201(d)(2). The Company currently offers and advertises the federally supported services throughout the requested designated service area through several different media, including newspaper, television, radio, and billboard advertising. Western Wireless also maintains various retail store locations throughout its authorized service areas, which provide an additional source of advertising. Western Wireless' advertising plan has already been approved by the Commission for the areas for which it has been designated as an ETC under the *Western Wireless ETC Order*. Upon receiving ETC designation in this docket, Western Wireless will advertise in the same manner and consistent with its previously approved advertising plan in the Designated Areas.

III. Western Wireless Requests Designation Throughout Each of the Designated Areas

12. For areas served by a rural telephone company, Section 214(e)(5) of the Act provides that the ETC's designated service area must be that rural telephone company's study area. A rural telephone company's "study area" is generally defined as all of the company's existing certificated exchange area in a given State. *Universal Service Order*, ¶ 172, n.434.

13. Pursuant to 47 U.S.C. § 214(e)(1) and Minn. Rule 7811.1400, subp. 2, Western Wireless requests designation as an ETC throughout each of the Designated Areas within the State of Minnesota, as set forth in Attachment 1 and Attachment 2. Western Wireless provides service throughout the Designated Areas. These Designated Areas are either rural telephone company study areas that Western Wireless serves in their entirety, as identified on Attachment 1, or rural telephone company wire centers where Western Wireless does not serve the entire study area, as identified on Attachment 2.

14. Western Wireless seeks immediate ETC designation in those rural telephone company study areas identified on Attachment 1 that it serves in their entirety. Where Western Wireless does not serve the entire study area, Western Wireless seeks conditional ETC designation on a wire center basis, as identified on Attachment 2, contingent on the FCC and the Commission establishing a different service area requirement in accordance with 47 C.F.R. § 54.207(c)-(d). It is thus necessary in this proceeding for the Commission to redefine the service area standard for certain companies from the study area to the wire center level to enable Western Wireless to meet the federal ETC requirements under 47 U.S.C. § 214(e). The Commission recently granted a similar request, which, like Western Wireless' request, sought redefinition "to the extent necessary to permit the Company to obtain ETC designation throughout its CMRS licensed service territory." *Midwest Wireless Order*, ¶ 3. *See also RCC Order*, ¶¶ 1-2. Thus, Western Wireless' request for redefinition should be granted.

15. The Act and the FCC's regulations require the FCC and the State to act in concert to develop an alternative service area for a rural LEC. The sole requirement in establishing a service area other than the study area is that the FCC and the State commission each take into account the Joint Board's recommendations and explain their rationale for reaching a different conclusion. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Universal Service Order*, ¶ 187; *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338, ¶ 41 (rel. Jan. 22, 2004) ("*Virginia Cellular*"). As explained more fully below, redefining the service area requirement for those certain rural telephone companies in this proceeding is fully consistent with the Joint Board's recommendations and FCC decisions.

16. As indicated on Attachment 2, redefinition of the service area requirement in certain of the Designated Areas has already been approved by the Commission in the *Midwest Wireless Order* and *RCC Order*. The redefinition granted in the *Midwest Wireless Order* is currently pending before the FCC.³ In those areas identified on Attachment 2, Western Wireless' designation would be final upon the FCC's consent to the Commission's redefinition. The Commission should grant Western Wireless' request for redefinition and direct Western Wireless to file a petition with the FCC under 47 C.F.R. § 54.207.

IV. Designation of Western Wireless as an ETC for the Designated Areas In the State of Minnesota Would Serve the Public Interest

17. For areas served by rural telephone companies, the Commission must find that designating Western Wireless as an additional ETC serves the public interest in accordance with

³ The FCC has initiated a proceeding to consider the Commission's request with respect to the *Midwest Wireless Order*. *Wireline Competition Bureau Initiates Proceeding to Consider the Minnesota Public Utilities Commission Petition to Redefine Rural Telephone Company Service Areas in the State of Minnesota*, CC Docket No. 96-45, Public Notice DA-03-3594 (rel. Nov. 7, 2003). No action has been taken on the *RCC Order*.

47 U.S.C. § 214(e)(2). The Commission has already made this finding in previously designating Western Wireless as an ETC. *Western Wireless ETC Order*, ¶ VIII.C. Western Wireless reaffirms that its designation in the requested Designated Areas will serve the public interest.

18. The Commission has followed the FCC's approach to the public interest analysis under 47 U.S.C. § 214(e)(2), considering (1) whether customers are likely to benefit from increased competition, (2) whether designation of an ETC would provide benefits not available from incumbent carriers, and (3) whether customers would be harmed if the incumbent carrier exercised its option to relinquish its ETC designation. *Midwest Wireless Order*, ¶ IV.D. Following this standard should again lead the Commission to determine that it is in the public interest to designate Western Wireless as an additional ETC in the study areas of certain rural telephone companies. *Western Wireless ETC Order*, ¶ VIII.C.

19. The public interest determination required under Section 214(e) of the Act depends on whether the designation of the additional ETC will promote competition, and if so whether consumers will ultimately realize benefits related to competition and the new services provided. The public interest determination should consider whether the benefits of an additional ETC outweigh any potential harms. *Virginia Cellular*, ¶ 28. The express purposes of the Act in this regard are as follows: "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added).

20. Competition in the telecommunications industry is, as a general matter, in the public interest, and the hallmark of a competitive marketplace is the maximization of consumer

choice. It is also clear that the public interest is served where there is a reasonable expectation that competition may have beneficial impacts for consumers.

21. As it applies to the designation of an additional ETC in an area served by a rural telephone company, the public interest necessarily must focus on the benefits of competition to the rural consumer.

22. The Commission must also apply the public interest factor in a way that advances universal service as contemplated by the Act. Congress gave the FCC responsibility to create rules and policies "for the preservation and advancement of universal service." 47 U.S.C. § 254(b). States must respect and defer to those FCC determinations. States cannot use a public interest standard to affect a result contrary to FCC directives. The FCC, for example, has directed that a state cannot deny an application because a CMRS provider may not meet "the regulatory requirements that govern ILECs, including privacy, marketing, service provisioning, and service quality requirements, as well as carrier of last resort (COLR) obligations." *Universal Service Order*, ¶ 142. The Commission must always remain consistent with the Act and FCC directives as it makes the public interest determination under Section 214(e)(2).

A. **Granting ETC Designation Will Facilitate Competition to the Benefit of Consumers**

23. The benefits of competition are presumed – increased competition can be expected to lead to better service and the provision of new, innovative services. *In the Matter of Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896, ¶¶ 16-22 (rel. Dec. 26, 2000) ("*Wyoming Order*").

24. Granting ETC status to Western Wireless will recognize, as the Commission previously determined in the *Western Wireless ETC Order*, the importance of allowing rural

consumers a choice of providers for their telecommunications needs. *Western Wireless ETC Order*, ¶ VIII.C. Consumers should be able to choose services based on their own needs, and not just the service of the incumbent LEC. When the Commission designates a competing carrier as an additional ETC, rural consumers choose their service provider on the basis of the most advantageous pricing, services, service quality, customer service, and service availability. And because Western Wireless' network supports the provisions of data services, customers will be able to combine basic universal services with advanced services if they so desire. The benefits of increased competitive choice for consumers are in the public interest. *Virginia Cellular*, ¶ 29.

25. Having this choice is important to rural consumers because Western Wireless' universal service offerings will provide benefits not otherwise available from the landline LECs. *Id.* For example, current service offerings by incumbent LECs have restricted local calling areas and are bound by the limitations of landline technology. Western Wireless provides an expanded local calling area, which is of great benefit to rural consumers who otherwise have to pay toll charges to reach local government offices, health care providers, businesses or family outside of a restricted landline calling area. *See Universal Service Order*, ¶ 114. Western Wireless' service also provides the benefits of mobility, which has great appeal to many rural consumers. *Virginia Cellular*, ¶ 29. Western Wireless provides innovative service offerings that will be tailored to consumers' needs.

26. In addition to increased choices, Minnesota's rural consumers can also expect lower rates and better service resulting from competition in the marketplace. Western Wireless provides 24-hour customer service, technical and operational support, which is more responsive than the support currently available from many LECs. In previously designating Western Wireless an ETC, the Commission found that the designation would provide consumers with

benefits of "affordability, reliability, and service quality" and noted that Western Wireless' "service would include specific features and enhancements not available, or available only at a premium, from the incumbents." *Western Wireless ETC Order*, ¶ VIII.C. The Commission further reasoned that Western Wireless' designation would further "at least three of the goals underlying federal and state policies favoring competition—customer choice, innovative services, new technologies." *Id.*

27. Western Wireless is committed to providing high service quality to its customers consistent with the public interest. Specifically, Western Wireless has adopted and complies with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets forth certain principles, disclosures and practices for the provision of wireless service to the benefit of consumers.

28. The FCC has confirmed that competition and universal service are to be accomplished together, and that rural consumers are entitled to achieve universal service goals through the benefits of competition:

Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges. We expect that applying the policy of competitive neutrality will promote emerging technologies that, over time, may provide competitive alternatives in rural, insular, and high cost areas and thereby benefit rural consumers. For this reason, we reject assertions that competitive neutrality has no application in rural areas or is otherwise inconsistent with section 254.

Universal Service Order, ¶ 50 (emphasis added).

29. The FCC and other State commissions have considered and rejected speculative claims that competition will hurt rural consumers. The FCC has rejected arguments that the

designation of an additional ETC in rural telephone company service areas would reduce investment in infrastructure, raise local service rates, reduce service quality to consumers, or result in loss of network efficiency:

We reject the general argument that rural areas are not capable of sustaining competition for universal service support. We do not believe that it is self-evident that rural telephone companies cannot survive competition from wireless providers. Specifically, we find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.

Wyoming Order, ¶22. Faced with claims that rural LECs could not respond to competition and would go out of business, this Commission found it more likely that competition would "perform its widely recognized function of motivating the incumbents to find and implement new operating efficiencies, lowering prices and offering better service in the process." *Western Wireless ETC Order*, ¶ VIII.C. This Commission requires that once an ETC applicant makes a initial showing that subsidy-fueled competition would not harm consumers, "it [is] incumbent upon the rural telephone companies to produce facts demonstrating that consumers in individual areas served by individual companies would be harmed by granting ETC status to [the applicant]." *Id.* (emphasis added). The Washington Utilities and Transportation Commission ("WUTC") has similarly dismissed as "overly speculative" rural LEC concerns that ETC designation would erode universal service for consumers. *In the Matter of the Petition of United States Cellular Corp., et al. for Designation as Eligible Telecommunications Carriers*, Third Supplemental Order Granting Petition for Designation as Eligible Telecommunications Carrier, Docket No. UT-970345, ¶ 46 (Jan. 27, 2000).

B. Granting ETC Designation Will Advance Universal Service by the Provision of New Telecommunications Services to Rural Consumers

30. Where Western Wireless has been previously designated as an ETC in Minnesota, it offers a wireless local loop service at \$14.99 per month under the BUS Offering, which advances universal service for Minnesota consumers. Once designated as an ETC in the Designated Areas, Western Wireless will begin offering the BUS Offering at the same rates, and subject to the same terms and conditions in these new Designated Areas. This will provide these consumers with more competition, and will make it more likely that high cost areas of the state will have affordable phone service as implicit subsidies are phased out. In addition, the designation of Western Wireless as an ETC may allow those consumers who are not currently receiving telephone service of any kind an opportunity to obtain telephone service for the first time. *Virginia Cellular*, ¶ 29. There is simply no question that the designation of Western Wireless as an ETC will advance universal service by increasing consumer choices and bringing new telecommunications services to rural areas consistent with the public interest.

C. No Rural LEC Will Experience Any Significant Adverse Impact from Western Wireless' ETC Designation to Justify Denying Consumers the Benefits of Competition

31. The designation of Western Wireless as an ETC in the requested Designated Areas will not result in any significant adverse impact to any rural telephone company. None of the areas in which Western Wireless is seeking designation is incapable of supporting an additional ETC.

32. Under the current federal universal service funding mechanisms, rural telephone companies will continue to receive funding based on an embedded cost methodology until 2006. This extended transition period – as well as their continued receipt of implicit subsidies within

intrastate access rates – ensures the rural companies can move successfully to competitive markets.

33. Western Wireless' designation will also ensure the continued affordability of telecommunications services in rural areas in Minnesota. *See Midwest Wireless Order*, ¶ IV.D.3. Western Wireless competitively markets a variety of service offerings, and Western Wireless' service plans are offered to rural customers at the same rates offered in urban areas.

34. Western Wireless' designation will not adversely burden the federal universal service fund.

35. Accordingly, designation of Western Wireless as an ETC will serve the public interest.

V. Redefinition Of Service Area Requirement for Certain Rural Telephone Companies

36. Western Wireless' request for ETC designation in certain areas identified on Attachment 2 is subject to the Commission's action to redefine the service area requirement for KMP Telephone Company and Loretel Systems, Inc. As stated above, the Act and the FCC's rules provide that the service area of a rural telephone company shall be the "study area" of the rural telephone company, until and unless the FCC and the State commission both agree to redefine this standard. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). 47 C.F.R. § 54.207 provides the mechanism by which the FCC will process a request by a State commission for redefinition of a service area requirement. The decision to redefine the service area requirement must be made after taking into account recommendations of the Federal-State Joint Board. *Id.*

A. Redefining the Service Area Requirement Is Consistent With Joint Board Standards

37. The FCC has identified three factors initially recommended by the Joint-Board which should be considered by the Commission and the FCC when determining the appropriateness of redefining the service area for an area served by a rural telephone company.

(i) The risk of cream-skimming

38. The first factor is the risk that a competitor would selectively target service only to the lowest cost areas of the rural ILEC's study area, a process labeled as "cream-skimming." The FCC noted that if a competitor were required to serve a rural telephone company's entire study area, the risk of "cream-skimming" would be reduced because a competitive ETC would be prevented from selectively targeting service only to the lowest cost exchange of the rural ILEC's study area. *Universal Service Order*, ¶ 189. As the Joint Board explained:

We note that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "cream skimming" by potential competitors. Potential "cream skimming" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.

In the Matter of Federal-State Joint Board on Universal Service, CC Docket 96-45, ¶ 172 (rel. Nov. 8, 1996) ("*Joint Board Recommendations*").

39. The risk of "cream-skimming" has been substantially eliminated by subsequent FCC action. Under the FCC's existing universal service support mechanisms, a rural telephone company receives high-cost universal service support based on the average of its embedded costs throughout the carrier's entire study area. *See* 47 C.F.R. §§ 54.301 and 54.303. As a result, a rural telephone company's support on a per-line basis will be the same throughout its study area even though the costs of serving customers in that study area may vary widely. This averaging

may create "artificial barriers to competitive entry in the highest-cost areas and artificial entry incentives in relatively low-cost portions of a rural carrier's study area" because a competitor may try to serve only the low-cost, high-support areas and ignore the more costly areas to serve. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *In the Matter of Multi-Association Group (MAG) Plan for Regulations of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Fourteenth Report and Order*, *Twenty-Second Order on Reconsideration*, and *Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Report and Order in CC Docket No. 00-256*, FCC 01-157, ¶ 144-164 (rel. May 23, 2001) ("*Fourteenth Report and Order*").

40. To minimize the opportunity for such cream-skimming, the FCC offered rural telephone companies the option to "disaggregate" – *i.e.*, target – the federal universal service support amounts they receive to the higher-cost portions of their study areas. In so doing, rural carriers were given the opportunity to disaggregate and target support – if they were truly concerned about cream-skimming – to ensure that a competitive ETC would receive less per-line support in low-cost areas and, conversely, to ensure that a competitive ETC would only receive higher per-line support in truly high-cost portions of their study areas. As the FCC noted:

Rural telephone companies . . . now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. Therefore, any concern regarding "cream-skimming" of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.

See In the Matter of Federal-State Joint Board on Universal Service Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming, CC Docket No. 96-45, *Order on*

Reconsideration, FCC 01-311, ¶ 12 (rel. Oct. 19, 2001). Thus, the risk of cream-skimming by an ETC applicant seeking designation for less than the study area has been practically eliminated because the incumbent rural telephone company can utilize the disaggregation process to target its per-line support to better reflect the actual costs of serving different areas throughout its entire study area. *Virginia Cellular*, ¶ 35, fn. 112. The Commission has also recognized this in previously granting redefinition. *Midwest Wireless Order*, ¶ IV.E.4. *See generally RCC Order*.

(ii) The effect redefinition may have on the rural telephone company's regulatory status

41. The second factor a state commission and the FCC must consider is the regulatory status enjoyed by rural telephone companies under the Act. The FCC determined that initially establishing a study area for a rural telephone company's service area was appropriate, at least temporarily, in recognition of the different competitive footing afforded to smaller rural telephone companies which are exempt from certain of the Act's requirements. *Universal Service Order*, ¶ 189; *Virginia Cellular*, ¶ 41. In making its recommendation, the Joint Board had reasoned:

For example, rural telephone companies are initially exempt from the interconnection, unbundling, and resale requirements of 47 U.S.C. § 251(c). The 1996 Act continues this exemption until the relevant state commission finds, inter alia, that a request of a rural telephone company for interconnection, unbundling, or resale would not be unduly economically burdensome, would be technically feasible, and would be consistent with section 254. Moreover, while a state commission must designate other eligible carriers for non-rural areas, states may designate additional eligible carriers for areas served by a rural telephone company only upon a specific finding that such a designation is in the public interest.

Joint Board Recommendations, ¶ 173.

42. Like the risk of cream-skimming, the risk that redefinition of the service area requirement would compromise or impair the incumbent's unique regulatory treatment under Section 251(f) of the Act has proven to be immaterial. Nothing in the service area redefinition

process for an ETC applicant affects the rural carrier's statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c). Likewise, the service area redefinition process does not affect the application of Section 214(e)(2)'s public interest analysis to the designation of an additional ETC in the rural telephone company's service area. The Act's public interest factor thus remains an effective check to prevent the designation of a competitive ETC who may otherwise pose a detriment to the rural consumers in those service areas. As the FCC has recognized, the continued existence of the public interest standard is a safeguard available to a state commission to support a redefinition request. *Universal Service Order*, ¶ 190.

43. In addition, the redefinition process does not affect the way in which a rural ETC calculates its embedded costs or the amount of per-line support it receives. Thus, the incumbent ETC will retain its unique regulatory status as a rural telephone company under the Act consistent with the Joint Board's recommendations.

(iii) Additional administrative burdens resulting from redefinition

44. The third and final factor to be considered is whether any administrative burdens might result from the redefinition of the service area requirement. A rural telephone company's universal service support payments are currently based on a rural company's embedded costs determined at the study area level. *Universal Service Order*, ¶ 189. The Joint Board initially expressed concern that rural telephone companies might have difficulty calculating costs on a less-than-study area level. The Joint Board stated:

Another reason to retain existing study areas is that it is consistent with our recommendation that the determination of the costs of providing universal service by a rural telephone company should be based, at least initially, on the Company's embedded costs. Rural telephone companies currently determine such costs at the study area level. We conclude, therefore, that it is reasonable to adopt the current study areas as the service areas for rural telephone companies rather than impose

the administrative burden of requiring rural telephone companies to determine embedded costs on a basis other than study areas.

Joint Board Recommendations, ¶ 174.

45. Despite its initial decision to adopt the study area as the rural telephone companies' service area, the FCC has now stated a policy favoring redefinition in instances where a rural carrier's study area is large and/or non-contiguous. In response to issues raised by competitive ETCs and wireless carriers who might not be able to provide facilities-based service throughout a rural company's entire study area, the FCC has expressly urged State commissions to explore redefinition for purposes of ETC designations. The FCC cautioned that requiring a new entrant to serve a non-contiguous service area as a prerequisite to ETC eligibility would impose a "serious barrier to entry, particularly for wireless carriers" and would be "particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service." *Universal Service Order*, ¶ 190.

46. Western Wireless requests that the Commission redefine the service area requirement for those rural telephone companies identified on Attachment 2 on an individual wire center basis for purposes of designating an ETC under 47 U.S.C. § 214(e). The Commission has already determined to redefine the service area requirement for certain rural telephone company study areas on an analogous basis in the *Midwest Wireless Order*, ¶¶ IV.E.2 & 4, and in the *RCC Order*, Order, ¶¶ 1-2.

47. The Commission can proceed to redefine the service area requirement as outlined above while appropriately taking into account the three factors noted by the Joint Board and adopted by the FCC. The first factor relating to a risk of cream-skimming is not present. Western Wireless seeks redefinition of the service area standard for certain rural telephone companies on an individual wire center basis so it can be designated as an ETC in those areas for

which it is licensed and has the ability to provide facilities-based services. Moreover, redefining the service area requirement to the wire center basis will not result in any effects of cream-skimming based on a consideration of the relative high cost and low cost wire centers within the incumbent's study area. *Virginia Cellular*, ¶ 42. Redefinition on this basis will also preserve and advance universal service by establishing designated service areas that are more reflective of the areas actually served. Redefinition furthers competition and protects the incumbents from selective targeting of specific areas with the lowest cost and highest support. Indeed, three of the companies in whose service areas Western Wireless seeks conditional ETC designation have already filed to disaggregate and target their high-cost support.⁴ As the Commission has recognized, the option of disaggregation has virtually eliminated all such risk. *Midwest Wireless Order*, ¶ IV.E.4. In short, there will be no opportunity for cream-skimming.

48. The second factor relating to the special regulatory status of rural LECs can also appropriately be taken into account by redefining on a wire center basis. Redefinition on this basis will not compromise or impair the unique treatment of these companies as rural telephone companies under Section 251(f) of the Act. Consequently, the companies will still retain the statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c) even if the service area requirement is redefined for purposes of Western Wireless' ETC designation. Moreover, redefinition will not affect the total amount of high-cost support that an incumbent rural telephone company will receive. *Virginia Cellular*, ¶ 43.

49. The Act's public interest factor for the designation of an additional ETC in the service areas of these rural telephone companies under 47 U.S.C. § 214(e)(2) will remain in

⁴ The three companies are Federated Tel. Coop., Mid-State Tel. Co. and Sleepy Eye Tel. Co. See <http://www.universalservice.org/hc/disaggregation/checklist/minnesota.xls>.

place. The continued existence of the public interest standard was noted by the FCC as a safeguard available to a State commission to support a redefinition request for service areas on a less-than-study area level. *Universal Service Order*, ¶ 190. This public interest factor will remain as an effective check to prevent the designation of an additional competitive ETC who may seek to target only low cost areas or otherwise pose a detriment to the rural consumers of the incumbents. Thus, the incumbent LECs would retain their unique status and special treatment as rural telephone companies under the Act consistent with the Joint Board's recommendations if the service area requirement is redefined from a study area to a wire center.

50. The third and final Joint Board factor relating to the administrative ease of calculating the costs of the rural telephone companies on a less-than-study area level is likewise not an issue. There are no administrative costs to consider because any federal universal service support available to a competitive ETC in an area served by one of the rural telephone companies would be determined based on the per-line support available to the rural telephone company itself. 47 C.F.R. § 54.307(a). This current funding mechanism will remain in place for approximately another three years, when the FCC is expected to make changes to the funding mechanism for rural telephone companies. Moreover, redefining the service area requirement will not require any rural telephone company to determine their costs for purposes of universal service support on a basis other than the study area level. *Virginia Cellular*, ¶ 44.

51. Accordingly, the Commission should act to redefine the service area standard for those rural telephone companies indicated on Attachment 2 on an individual wire center basis in order to foster competition and bring new telecommunications services to rural Minnesota. Consistent with the factors articulated by the FCC based on the Joint Board's recommendations,

and adhered to by the Commission in the *Midwest Wireless Order* and the *RCC Order*, the Commission should order redefinition from the study area to a wire center.

B. Redefinition is Necessary to Promote Competition and Advance Universal Service

52. The redefinition of the service area standard for these rural telephone companies is necessary for the promotion of competition and the advancement of universal service. Unless the service area standard is redefined, Western Wireless is precluded from being designated as an ETC in *any* of these rural telephone companies' wire centers because Western Wireless cannot serve the entire study area. Redefinition is in the public interest because it will enable Western Wireless, and other competitors, to bring new services and new technologies to customers of these rural telephone companies.

53. A study area requirement creates a disincentive to competition. This type of barrier to entry was appropriately recognized by the WUTC when it successfully applied to the FCC to redefine the service areas for the rural LECs in the State of Washington. The WUTC noted: "The designation of the service area impacts the ease with which competition will come to rural areas The wider the service area defined by the state commission, the more daunting the task facing a potential competitor seeking to enter the market." *Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas at the Exchange Level and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Washington Util. & Transp. Comm'n, Docket No. 970380, at ¶ 3 (Aug. 1998). The WUTC concluded that smaller service areas for the designation of ETCs in rural areas will promote competition and speed deregulation. *Id.* at ¶ 9.

54. The FCC has previously determined that redefinition of the service area from the study area to the wire center basis facilitates local competition by enabling new providers to

serve relatively small areas. *In the Matter of Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas of the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, CC Docket No. 96-45, DA 99-1844, ¶ 8 (rel. Sept. 9, 1999). The FCC noted: "We find that our concurrence with rural LEC petitioners' request for designation of their individual exchanges as service areas is warranted in order to promote competition." *Id.* The FCC concluded that Washington's "effort to facilitate local competition justifies [the FCC's] concurrence with the proposed service area designation." *Id.*

55. Redefinition of service area requirement for those certain rural telephone companies indicated on Attachment 2 to an individual wire center basis will foster competition in Minnesota. Redefining the service area for purposes of determining Western Wireless' ETC service areas will enable Western Wireless and other carriers to offer competitive universal services to the customers of these rural telephone companies. This fostering of competition comports with the goals of the Act and the FCC's directives. Unless the Commission seeks redefinition, the customers of these rural telephone companies' wire centers Western Wireless desires to serve will be denied all the benefits of competition that Congress and the FCC have sought to foster. Accordingly, this Commission should order that the service areas of those rural telephone companies so identified on Attachment 2 should be redefined into service areas on an individual wire center basis for ETC designation purposes.

VI. Other Required Disclosures

56. A person wishing to challenge this petition's form and completeness must do so within ten days of its filing pursuant to Minn. Rule 7811.1400, subp. 6.

57. A person wishing to comment on this petition must file initial comments within 20 days of its filing pursuant to Minn. Rule 7811.1400, subp. 8. Initial comments must include a

recommendation on whether the filing requires a contested case proceedings, expedited proceeding, or some other procedure, together with reasons for the recommendation. *Id.*

58. If a person who wishes to file initial comments is not entitled to intervene in a commission proceeding as of right and desires full party status, the person shall file a petition to intervene pursuant to Minn. Rule 7829.0800, or Minn. Rule 1400.6200 if the matter is before an administrative law judge, before the comment period expires. Minn. Rule. 7811.1400, subp. 9. The intervention petition may be combined with comments on the filing. *Id.*

59. Commenting parties have ten days from the expiration of the original comment period to file reply comments. Minn. Rule 7811.1400, subp. 10. Reply comments must be limited in scope to the issues raised in the initial comments. *Id.*

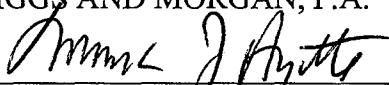
VII. Conclusion

60. Because Western Wireless meets the requirements for eligibility for designation as an eligible telecommunications carrier, Western Wireless requests that the Commission promptly grant this Petition, subject to the conditions already in effect in other areas where it has been designated.

Respectfully submitted,

Dated: February 12, 2004

BRIGGS AND MORGAN, P.A.

By 

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**ATTORNEYS FOR
WWC HOLDING CO., INC. d/b/a
CELLULAR ONE**

ATTACHMENT 1

**Rural Telephone Company Study Areas for Which Western Wireless
Seeks ETC Designation in This Petition**

<u>Company Name</u>	<u>Study Area Code</u>
Christensen Comm. Co. d/b/a Madelia Tel. Co.	361425
Dunnell Tel. Co. Inc.	361381
New Ulm Telecom. Inc.	361442
Red River Rural Tel Assn.	381631
Winsted Tel. Co.	361507

ATTACHMENT 2

**Rural Telephone Company Wire Centers for Which Western Wireless Seeks
Conditional ETC Designation in This Petition**

<u>Company Name</u>	<u>Wire Center Name</u>	<u>Redefined Already</u>
CenturyTel of MN Inc.	Baudette Brewster Dundee Fairfax Fulda Gibbon Humboldt Heron Lake Jeffers Lafayette Lamberton Luverne Minneota Round Lake Renville Roseau Rushmore Wilmont Warroad Westbrook	<i>Midwest Wireless Order; RCC Order</i>
Federated Tel. Coop.	Milan	<i>Midwest Wireless Order; RCC Order</i>
KMP Tel. Co.	Danube Pennock	
Loretel System, Inc.	Ada Glyndon Perley	
Mid-State Tel. Co.	New London Spicer	<i>Midwest Wireless Order; RCC Order</i>

ATTACHMENT 2 (continued)

<u>Company Name</u>	<u>Wire Center Name</u>	<u>Redefined Already</u>
Sleepy Eye Tel. Co.	Hanska Sleepy Eye	
Twin Valley-Ulen Tel. Co. Inc.	Flom Gary Twin Valley Waubun	
Sprint – Minnesota, Inc.	Buffalo Lake Brownton Cologne Cokato Dassel Glencoe Granite Falls Grove City Howard Lake Lester Prairie Norwood New Richland Plato Silver Lake St. James Stewart Waldorf	<i>Midwest Wireless Order; RCC Order</i>

ATTACHMENT 3

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Kenneth Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

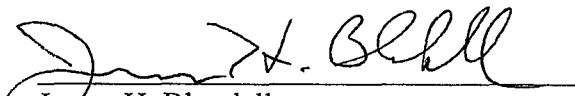
In the Matter of WWC HOLDING CO., INC. d/b/a)
CELLULARONE® Petition for Designation as an)
Eligible Telecommunications Carrier and)
Redefinition of Rural Telephone Company Study) Docket No. _____
Areas)
)

CERTIFICATION OF JAMES H. BLUNDELL

I, the undersigned, James H. Blundell, do hereby verify as follows:

1. I serve as Director – External Affairs for Western Wireless Corporation and each of its affiliates including WWC Holding Co., Inc. d/b/a CellularOne® ("Western Wireless").
2. This Certification is submitted in support of Western Wireless' Petition for Designation as an Eligible Telecommunications Carrier and Petition for Redefinition of Rural Telephone Company Service Area Requirement for Certain Service Areas ("Petition").
3. I further declare that I have reviewed the Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.
4. I certify that the foregoing is true and correct to the best of my knowledge, information and belief.

Date: Feb. 11, 2004


James H. Blundell

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

In Re: In the Matter of WWC Holding
Co., Inc. d/b/a CellularOne® Petition for
Designation as an Eligible Telecommunications
Carrier and Redefinition of Rural Telephone
Company Service Area Requirement
MPUC Docket No. _____

Sandra J. Cambronne, being first duly sworn on oath, deposes and states that on the 12th day of February, 2004, copies of the Verified Petition for Designation as an Eligible Telecommunications Carrier and Redefinition of Rural Telephone Company Service Area Requirement for Certain Service Areas were mailed by United States first class mail, postage prepaid thereon, to the following:

Dr. Burl W. Haar [original and 15 copies]
Executive Secretary
MN Public Utilities Commission
121 Seventh Place E, Suite 350
Saint Paul, MN 55101

Linda Chavez [4 copies]
Telephone Docket Coordinator
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
Saint Paul, MN 55101

Curt Nelson [2 copies]
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Telephone Co.
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Minneapolis, MN 55402-4129

Sandra J. Carlsberg

Subscribed and sworn to before me
this 12th day of February, 2004

Cynthia L. Fjelstad
NOTARY PUBLIC

